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9 *Attorneys for Defendant Continental Casualty Company, on*  
10 *behalf of itself and "CNA Insurance Company, Inc.," which is*  
*not a legal entity*

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 THE FOCAL POINT, LLC, a California limited  
liability company; ANDREW SPINGLER;  
15 LINDA SPINGLER; G. CHRISTOPHER  
RITTER; and SCOTT HILTON,

16 Plaintiffs,

17 v.

18 CNA INSURANCE COMPANY, INC.;  
19 CONTINENTAL CASUALTY COMPANY,

20 Defendants.

No. C07-05764 MHP

**DEFENDANT CONTINENTAL  
CASUALTY COMPANY'S REQUEST  
FOR JUDICIAL NOTICE IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT**

[Notice of Motion; Memorandum of Law  
and Declaration of J. Faas Filed  
Concurrently Herewith; [Proposed] Order  
Lodged Concurrently Herewith]

Date: April 28, 2008  
Time: 2:00 p.m.  
Dept. 15

1           **PLEASE TAKE NOTICE** that Defendant Continental Casualty Company hereby  
2 requests the Court to take judicial notice of the following document pursuant to Federal Rule of  
3 Evidence 201:

- 4           • March 3, 2008 Case Management Conference Transcript for *The Focal Point,*  
5           *LLC, et al. v. CNA Insurance Company, et al.*, Case No. C07-05764 MHP (N.D.  
6           Cal.). A true and correct copy of the March 3, 2008 Transcript is attached hereto  
7           as Exhibit 1.

8  
9 Dated: April 4, 2008

Respectfully submitted,

ROSS DIXON & BELL, LLP

11  
12 By: /s/ Richard A. Simpson

13 Richard A. Simpson  
14 Monique M. Fuentes

15 *Attorneys for Defendant Continental*  
16 *Casualty Company, on behalf of itself and*  
17 *"CNA Insurance Company, Inc.," which is*  
18 *not a legal entity*  
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# **EXHIBIT 1**

## 1 UNITED STATES DISTRICT COURT

## 2 NORTHERN DISTRICT OF CALIFORNIA

3 BEFORE THE HONORABLE MARILYN HALL PATEL, JUDGE

4 -----)  
5 The Focal Point, LLC, et al., )

6 Plaintiffs, )

7 v. )

No. C 07-5764 (MHP)

8 CNA Insurance Company, Inc., )  
9 et al., )

10 Defendants. )

San Francisco, California

Monday, March 3, 2008

(16 pages)

11  
12 TRANSCRIPT OF PROCEEDINGS13 APPEARANCES:14 For Plaintiffs: Squire, Sanders & Dempsey, LLP  
15 One Maritime Plaza  
16 Suite 300  
San Francisco, California 9411117 BY: ETHAN A. MILLER  
DANIEL T. BALMAT18 For Defendants: Ross, Dixon & Bell, LLP  
19 Five Park Plaza  
Suite 1200  
Irvine, California 9261420 BY: MONIQUE M. FUENTES  
21  
22  
23  
24  
25

1 Monday, March 3, 2008

2 (4:20 p.m.)

3 DEPUTY CLERK: 07-5764, The Focal Point versus CNA  
4 Insurance Company.

5 Will counsel please state your appearances for the  
6 record?

7 THE COURT: May I have your appearances, please?

8 MR. MILLER: Good afternoon. Ethan Miller and Dan  
9 Balmat for plaintiff, The Focal Point.

10 MS. FUENTES: Monique Fuentes for defendant  
11 Continental and CNA.

12 THE COURT: You get to interpret the policies.

13 MS. FUENTES: I get the joy of interpreting insurance  
14 policies.

15 THE COURT: What's a nice woman like you doing this  
16 kind of stuff?

17 MS. FUENTES: I don't know, just fell into it about  
18 eight years ago.

19 THE COURT: And with respect to what the under -- you  
20 know the background of this case is, is this the one that  
21 involved -- no, this did not involve a lawsuit in New Mexico,  
22 did it?

23 MR. MILLER: No, your Honor.

24 THE COURT: That's the other case with the two  
25 insurance companies suing each other.

1 MR. MILLER: No.

2 THE COURT: This is the --

3 MR. MILLER: If I could assist, your Honor.

4 THE COURT: What exactly is the nature of this group  
5 from which Mr. Ward was expelled?

6 MR. MILLER: That's a good question. The entity is  
7 called The Focal Point, and you probably have seen their work  
8 in this line of work. They are a trial graphics and consulting  
9 outfit. And they work with local law firms and law firms  
10 around the country to prepare graphics for trial and work with  
11 the jury in working up cases, and particularly with  
12 demonstratives and that sort of thing.

13 THE COURT: Now, what is the particular gravamen of  
14 Ward's claim such that there is a claim apparently against,  
15 what, the insurance policy?

16 MR. MILLER: Brian Ward and my clients had a falling  
17 out in the fall -- in the summer and fall of 2006 as a result  
18 of which he was expelled from The Focal Point and has alleged  
19 breach of fiduciary duty and other allegations against The  
20 Focal Point.

21 The case has since settled. It's settled about three  
22 weeks ago, or a month ago. We tendered the Ward claim to CNA,  
23 the DNO and entity liability carrier. CNA declined to defend  
24 or indemnify for the claim, and that's where we find ourselves  
25 now.

1 THE COURT: Now, was the claim -- was the suit or  
2 whatever the claim was that was made made against Focal Point,  
3 LLC and certain members of that corporation or just one or the  
4 other or what?

5 MR. MILLER: That gets right to the rub. Brian Ward,  
6 the underlying claimant, in attempting apparently to preclude  
7 any access to insurance for this, purported to make his claim  
8 only against the individual members and not against The Focal  
9 Point itself. But of course The Focal Point itself under their  
10 operating agreement is responsible for any claims made against  
11 the members in the course of their conduct. And in any event,  
12 in the very letter that Mr. Ward asserts his claim in, he says  
13 that The Focal Point is responsible and will have to pay any  
14 ultimate judgment.

15 So there are both, your Honor. There's both a claim  
16 against The Focal Point and the individual members themselves,  
17 and this gets into the next question, which is because CNA -- I  
18 don't want to preargue our pending motion which we do have on  
19 file, but the position CNA has taken is that now in fact there  
20 is no claim against The Focal Point itself; there's only a  
21 claim against the individuals.

22 Well, once CNA said that -- even though it was not, in  
23 our opinion, not the case -- our clients then didn't have any  
24 choice but to present their claim to The Focal Point under the  
25 terms of their operating agreement.

CERTIFICATE OF REPORTER

I, Connie Kuhl, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in Case No. C 07-5764 (MHP), The Focal Point, LLC, et al., v. CNA Insurance Company, Inc., et al., were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

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Connie Kuhl, RMR, CRR

Monday, March 10, 2008